

THE EFFECTIVE DATE OF THIS ORDINANCE IS SEPTEMBER 28, 2006

ORDINANCE NO. 06-29-425

OPINION, FINDINGS AND ORDINANCE  
OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF  
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF JOHN BARE/NUSBAUM TRUSTEES

REZONING CASE NO. R-03-04

OPINIONS/FINDINGS

John Bare/Nusbaum Trustees filed this application to rezone 7.6 acres of land, more or less, from R-3 Low Density Residential to Planned Unit Development (PUD), all as more fully described in the record. The property is located on the north side of I-70 at the terminus of Newport Drive and surrounded by the Spring Ridge Community in the New Market Planning Region.

The staff of the Frederick County Planning Commission recommended approval of the proposed PUD zoning and concurred with the five conditions recommended by the Planning Commission. The maximum land use density recommended by the Planning Commission staff is based on the project proposal to consist of 38 dwelling units on the 7.6 acres. This calculates to be a gross PUD density of 5 dwelling units per acre. The applicants propose to develop 38 townhomes in a similar fashion as the adjoining properties in the Spring Ridge PUD, which completely surrounds the subject property.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Maryland Code Annotated, Article 66b, § 4.05(a):

1. **POPULATION CHANGE**

With 38 dwelling units, the development can be expected to have a population of 110, based on an average household size of 2.9 in the New Market Region.

2. **AVAILABILITY OF PUBLIC FACILITIES**

A. **SCHOOLS,**

The site is located within the Oakdale Elementary (112% capacity, June 2005 BOE), Thomas Johnson Middle (71% capacity, June 2005 BOE), and the Thomas Johnson High School (91% capacity, June 2005 BOE), attendance areas. The County's adopted FY 2006-2011 Capital Improvements Program (CIP) provides for the completion of an addition to Oakdale Elementary School in 2008 and Oakdale Middle School in 2009. The proposed development with 38 townhomes can be expected to generate 7 elementary students, 3 middle school students and 3 high school students, based on Board of Education pupil yield data.

B. **FIRE AND RESCUE SERVICES**

The site is approximately 0.50 miles from the New Market Volunteer Fire Company. A new fire station is planned for the Spring Ridge community.

C. **POLICE SERVICE**

The Frederick County Sheriff's Office and the Maryland State Police provide police protection to the site.

D. **LIBRARIES**

The nearest library to the site is the main facility -- C. Burr Artz -- located in downtown Frederick.

#### E. PARKS AND RECREATION FACILITIES

The applicant states that four acres of open space will be provided in the development. Section 1-19-321 of the Frederick County Zoning Ordinance requires 2.2 acres of open space in the proposed development (30% of 7.6 acres).

#### F. WATER AND SEWER

The site has a water and sewer classification of W-4 Dev/S-4 Dev, meaning service within 4 to 6 years.

### 3. **PRESENT AND FUTURE TRANSPORTATION PATTERNS**

The subject site fronts on I-70 and is surrounded by the Spring Ridge PUD. Currently, Newport Drive West in the Spring Ridge PUD ends in a cul-de-sac at the western boundary of the parcel; Newport Drive East is truncated adjacent to the subject property. The applicant proposes to complete the connection of Newport Drive through the site. The connection of Newport Drive East and Newport Drive West -- both classified as local roadways -- will provide another link to Spring Ridge Parkway for Spring Ridge residents on the eastern edge of the community.

### 4. **COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA**

The site is fully wooded and connects with two open-space wooded parcels in the Spring Ridge PUD. The property contains no streams, wetlands or floodplain. There are no structures of historical significance on the site.

Townhomes surround the site to the east and west. Two open-space parcels and a "tot lot" abut the property to the north.

The proposed PUD zoning district is compatible with the surrounding Spring Ridge PUD.

### 5. **RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION**

The Frederick County Planning Commission recommended approval of the requested PUD Floating Zone with five conditions.

**6. RELATIONSHIP WITH THE FREDERICK COUNTY  
COMPREHENSIVE PLAN**

At the time of the Board's public hearing on this application the properties were designated Low Density Residential with planned water and sewer on the 1993 New Market Region Plan.

The site was zoned Agriculture (A) until the 1993 update to the New Market Region Plan, during which the site was rezoned to R-3 Low Density Residential. Development of the site under R-3 zoning would result in approximately 20 single family lots.

In June 2002, the applicants submitted a request to rezone the properties to Planned Unit Development (PUD) during the New Market Region Plan update process which began in 2001. This request was denied by the Zoning Administrator under Frederick County Code Section 1-19-70, which does not allow applications for floating zones or individual piecemeal zoning changes during the pendency of a region plan update, unless the Board grants a waiver. On October 29, 2002, the Board granted the applicants' request for a waiver to allow the submission of this floating zone application on the subject property during the update of the New Market Region Plan.

The proposed gross density of 5 dwelling units per acre is consistent with the 1-5 dwelling units per acre for low density residential.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is feasible and desirable. The Board finds that the proposal complies with all the purposes of the PUD classification and will further those purposes. The Board finds that this proposal is compatible with the adjoining land uses and will have no significant adverse impacts. The Board finds that this proposal is in the public interest. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development. The Board establishes the maximum gross

land use density as 5 dwelling units per acre, based on the ratio of the proposed 38 dwelling units to the 7.6 acre site.

The proposed PUD Floating Zone classification will be granted subject to the conditions stated below.

### ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-03-04 is hereby **GRANTED** for the reclassification of 7.6 acres of land, more or less (as delineated in the record), from the R-3 Low Density Residential Classification to the Planned Unit Development (PUD) Floating Zone classification, subject to the following conditions<sup>1</sup>:

1. The applicant shall design the project, to the maximum extent possible, in conformance with the County's Community Design Guidelines and Development Principles.
2. The applicant shall narrow the cul-de-sac 'bulb' at Newport Drive West to County standards to become a through road, with sidewalks, to connect with Newport Drive East. The applicant shall maintain natural vegetation between I-70 and Newport Drive, extended, to provide an aesthetic and acoustic buffer.
3. The applicant shall coordinate with Frederick County staff, prior to submission of a Phase II plan, to consider lot and design options which will minimize forest fragmentation and provide the best forest connectivity with the two adjacent open space parcels to the north.
4. The applicant shall provide access through the site to the "tot lot" and the temporary access road located to the north of the site.

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<sup>1</sup> The term "developer" or "applicant" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

5. The applicant shall clarify the incorporation of Moderately Priced Dwelling Units (MPDUs) into the project at the time of Phase II submission and shall supply plans for incorporating this development into the Spring Ridge Homeowners Association.

The conditions included as part of the granting of this PUD floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the zoning shall revert to the previous R-3 Low Density Residential zoning classification.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification, with conditions, as indicated above.

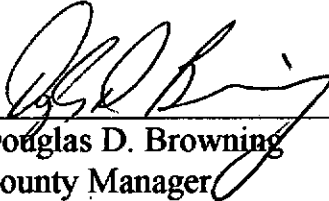
The undersigned hereby certify that this Ordinance was approved and adopted on the 28<sup>th</sup> day of September, 2006.

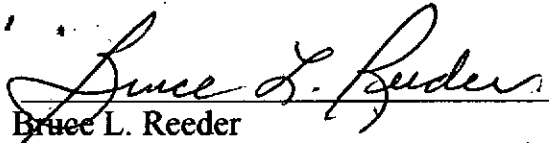
BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady  
Michael L. Cady, Vice President

John R. Lovell, Jr.  
John R. Lovell, Jr.

ATTEST:

  
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Douglas D. Browning  
County Manager

  
\_\_\_\_\_  
Bruce L. Reeder

MSC 9/28/06

Commissioners John L. Thompson, Jr. and Jan H. Gardner voted against the proposed reclassification.